International Longshoremen's and Warehousemen's Union Local 19 *and* West Coast Container Service, Inc. and Automotive Machinists, Lodge 289, International Association of Machinists and Aerospace Workers, AFL-CIO. Case 19-CD-408

February 17, 1983

DECISION AND DETERMINATION OF DISPUTE

BY MEMBERS JENKINS, ZIMMERMAN, AND HUNTER

This is a proceeding under Section 10(k) of the National Labor Relations Act, as amended, following the filing of a charge by West Coast Container Service, Inc.,[1] alleging that International Longshoremen's and Warehousemen's Union Local 19[2] has violated Section 8(b)(4)(D) of the Act by engaging in certain proscribed activity with an object of forcing or requiring the Employer to assign certain work to employees represented by ILWU rather than to employees represented by Automotive Machinists, Lodge 289, International Association of Machinists and Aerospace Workers, AFL-CIO.[3]

Pursuant to notice, a hearing was held before Hearing Officer Fred Bonner on April 13, 1982. All parties appeared and were afforded full opportunity to be heard, to examine and cross-examine witnesses, and to adduce evidence bearing on the issues.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has reviewed the Hearing Officer's rulings made at the hearing and finds that they are free from prejudicial error. They are hereby affirmed.[4]

Based upon the entire record in this case, and the briefs of the parties, the Board makes the following findings:

I. THE BUSINESS OF THE EMPLOYER

The undisputed record testimony establishes that, since 1973, the Employer, a Washington corporation with its principal office located in Seattle, Washington, has been engaged in the business of repairing and maintaining ocean cargo containers, chassis, and ancillary refrigeration equipment at its repair facility, which has been located at various different terminals in the Port of Seattle. The undisputed record testimony further shows that, during the past fiscal or calendar year, the Employer had gross revenues in excess of $500,000 and purchased goods and materials valued in excess of $50,000 directly from suppliers located outside the State of Washington. We find that the Employer is engaged in commerce within the meaning of Section 2(6) and (7) of the Act and that it will effectuate the purposes of the Act to assert jurisdiction herein.

II. THE LABOR ORGANIZATIONS

The parties stipulated, and we find, that ILWU and the Machinists are labor organizations within the meaning of Section 2(5) of the Act.

III. THE DISPUTE

A. *Background and Facts of the Dispute*

The Employer specializes in the repair and maintenance of ocean cargo containers, the chassis used to transport these containers, and the refrigeration equipment attached to some of these containers. Since March 6, 1982, it has performed this work at a repair facility located at Terminal 25 in the Port of Seattle. For the year preceding March 1982, its repair facility was temporarily located at Terminal 28 in the Port of Seattle. Between 1973 and 1981, its repair facility was located at Pier 46 in the Port of Seattle. Its customers are the various shipping lines which own the containers and ancillary equipment. The record indicates that the Employer does not have ongoing contractual relationships with its customers to perform all of their repair and maintenance work, but rather receives individual repair and maintenance contracts for particular jobs. The

[1] Herein called the Employer.

[2] Herein called ILWU.

[3] Herein called the Machinists. The name of the Machinists appears as amended at the hearing.

[4] ILWU contends that the Hearing Officer erred in sustaining the Employer's objections to the admission of two exhibits, an arbitration award concerning the transportation of "good order" chassis at Terminal 25 and the minutes of ILWU's meeting with Pacific Maritime Association employers concerning its claim to the work in dispute herein of draying "bad order" containers at Terminal 25. Inasmuch as the arbitration award concerns the transportation of "good order" chassis rather than the draying of "bad order" containers involved in this dispute and as neither the Employer nor the Machinists was a party to that proceeding or to the collective-bargaining agreement under which it arose, we agree with the Hearing Officer that the award is irrelevant to the issues in this case. As to the minutes of the ILWU-PMA meeting, we agree with the Hearing Officer that the document is inadmissible because the witness authenticating it testified it was not an accurate description of the meeting and because neither the Employer nor the Machinists was a party to the grievance proceeding or to the contract under which it arose. ILWU also contends that the Hearing Officer erred in sustaining the Employer's objections to the testimony of ILWU official Russell Alexander regarding the current status of ILWU's grievance under its contract with PMA. Again, since neither the Employer nor the Machinists was a party to the grievance or to the PMA contract, we agree with the Hearing Officer's rejection of this testimony. Further, we find no merit in ILWU's contentions that the Hearing Officer erred in permitting the Employer's counsel to introduce hearsay testimony as background evidence or to use a leading question to summarize the previous testimony of his witness.

Employer picks up damaged containers, upon request, from the 8 to 10 different piers or terminals in Seattle and Tacoma, Washington; transports the containers to its repair facility where the repair and maintenance work is performed; and returns the repaired containers to the particular piers or terminals where they originated. It presently employs 33 mechanics to perform the repair and maintenance work at its repair facility. Two of these mechanics spend about half of their working time driving tractor-trailer equipment to and from the Employer's repair facility and the various piers or terminals, where they pick up and deliver the containers on which the Employer is performing work.

Since 1973, the Employer's mechanics have been represented by the Machinists and covered by successive collective-bargaining agreements, the most recent of which is effective from July 1, 1980, to July 1, 1983. The Employer has never been a party to any contract with ILWU nor has it employed any employees represented by ILWU; however, the terminal managers of the various piers or terminals where the Employer picks up damaged containers employ longshoremen represented by ILWU to load and unload the containers on and off the ships of the shipping lines. The shipping lines, which are the Employer's customers, and the terminal managers are members of a multiemployer bargaining association called the Pacific Maritime Association (PMA), which has a contract with ILWU.

After the Employer moved its repair facility to Terminal 25 on March 6, 1982, it picked up and returned one damaged container belonging to K Lines at Terminal 25 without incident. On March 15, 1982, Neptune Orient Lines (NOL) requested it to pick up two damaged containers from Terminal 25. Employee Jeff Frisvold drove a tractor from the Employer's repair facility to the main entrance of the Seacon facility at Terminal 25,[5] about one-quarter mile, where a checker represented by ILWU informed him that the damaged NOL containers were on the "bull rail."[6] Frisvold drove to the "bull rail," hooked up one of the containers to his tractor, and hauled it back to the Employer's repair facility, leaving through the main entrance to Terminal 25.[7] Frisvold then drove the tractor back through the main entrance of Terminal 25 to the "bull rail," hooked up the second container, and hauled it to the main entrance to Terminal 25. There he observed a man taking pictures of his tractor and container. Frisvold testified that this man, whom he later identified as ILWU business agent Geoff Frye, approached him and asked, "Did you know you're scabbing off the longshoremen?" Frisvold testified that he responded he did not know, and Frye stated, "You could get in some trouble."[8] Frye then left. Frisvold hauled the container back to the "bull rail" and returned to the Employer's repair facility without it. Frisvold testified that he refused to haul any more NOL containers from Terminal 25 after that because he did not want to be called a "scab." The Employer then sent employee John Smith to Terminal 25 that same day to pick up the second NOL container which Frisvold had refused. Smith testified that he had talked to Frisvold about Frisvold's conversation with Frye, so when he drove the tractor to the main entrance of Terminal 25 he called ILWU's office and spoke to Frye on the telephone. Smith testified that he asked Frye what the grievance was and Frye responded, "You're taking too much work away from the longshoremen." Smith also testified that he asked Frye whether he should take the container off Terminal 25 and Frye told him, "No, I don't want you to take any more off."[9] Smith then refused to haul the NOL container from Terminal 25.

As a result of the incident on March 15, 1982, NOL contracted with one of the Employer's competitors to perform the repair work on the damaged container. NOL has not requested the Employer to pick up any damaged containers from Terminal 25 since that time; however, the Employer has continued to use its employees represented by the Machinists to pick up containers from Terminal 25 when requested to do so by other companies without any further incidents.

ILWU has filed a grievance claiming that, under its contract with PMA and pursuant to past practice at Terminal 25, longshoremen are entitled to do the work of hauling damaged containers from the Seacon facility at Terminal 25 to an area immediately adjacent to the Employer's repair facility.

[5] Seacon is the terminal manager at Terminal 25 and thus is responsible for loading and unloading the ships which dock at Terminal 25. Seacon's container yard and docking area occupy more than half of the property at Terminal 25. The rest of the property is occupied by the Employer's repair facility, an American President Lines warehouse and container loading facility, and a Port of Seattle cold storage facility.

[6] The "bull rail" at Terminal 25 is the area next to the water where the ships dock.

[7] Although the Employer's repair facility is located on property which is actually part of Terminal 25, there is no access from its facility to the Seacon facility at Terminal 25 except via a public road running along the outside of the Terminal 25 property.

[8] Frye corroborated most of Frisvold's testimony about this incident; however, Frye testified that he stated to Frisvold merely, "I believe that you are scabbing on longshore work," without any mention of getting in trouble.

[9] Frye testified that he received a telephone call from Smith asking what was going on and that he told Smith there would be meetings between ILWU and the Machinists about the maintenance and repair work at Pier 25 but they had not got around to that pier yet. Frye testified that Smith asked him about draying the container but he stated merely, "You have to make up your own mind, I cannot tell you what to do."

This grievance has not yet been resolved. Neither the Employer nor the Machinists is a party to these grievance proceedings.

B. *The Work in Dispute*

The parties were unable to agree on a description of the work in dispute. The notice of 10(k) hearing defines the work in dispute as: "Drayage and transport of cargo containers to be repaired by West Coast Container Service, Inc., at Terminal 25, Port of Seattle." While ILWU took the position that this definition was sufficient, the Employer contended that a more accurate description of the work in dispute would be: "Drayage and transport of cargo containers to be repaired by West Coast Container Service, Inc. from Terminal 25, Port of Seattle, to the West Coast Container Service repair facility at 3314 East Marginal Way South, Seattle, Washington." The Machinists took no position on this issue. We find it clear from the record that the work in dispute herein is the drayage and transport of cargo containers to be repaired by the Employer from the Seacon facility at Terminal 25, Port of Seattle, to the Employer's repair facility at Terminal 25, Port of Seattle.

C. *Contentions of the Parties*

The Employer contends that the work should be assigned to its employees represented by the Machinists, arguing that the skills and work involved, employer and industry practice, the collective-bargaining agreement with the Machinists, employer assignment and preference, and efficiency of operation all favor such a result.

ILWU initially claims that there is no jurisdictional dispute in this case within the meaning of either Section 10(k) or 8(b)(4)(D) of the Act. Thus, ILWU contends that it took no action against the Employer and did not cause the Employer's employees to refuse to perform work. Further, ILWU argues that, in disputing NOL's assignment of this work to the Employer's employees, its objective was limited solely to the preservation of work that had traditionally been performed by the employees it represents. Alternatively, ILWU contends that even if a Section 10(k) dispute does exist, the disputed work should be awarded to the employees it represents because of the following factors: the skills and work involved, a prior Board certification, the past practice at Terminal 25, industry practice, agreements between ILWU and the Machinists, the PMA contract, an arbitration award, and NOL's assignment of the work.

The Machinists took no position on the assignment of the work.

D. *Applicability of the Statute*

Before the Board may proceed with a determination of the dispute pursuant to Section 10(k) of the Act, it must be satisfied that there is reasonable cause to believe that Section 8(b)(4)(D) has been violated and that the parties have not agreed upon a method for the voluntary adjustment of the dispute.

As to the statutory requirement of reasonable cause to believe that Section 8(b)(4)(D) has been violated, it is undisputed that on March 15, 1982, ILWU business agent Frye had conversations with both of the Employer's employees who were assigned to transport the damaged NOL container from Terminal 25 and that, as a result of these conversations, both of the employees refused to transport the container back to the Employer's repair facility. While there is some dispute about what Frye told each employee, Frye admitted that he told Frisvold, "I believe that you are scabbing on longshore work," and the record establishes that Frisvold repeated Frye's remark to Smith. Frye also admitted that he told Smith there was a dispute between ILWU and the Machinists about the repair work at Terminal 25 and that, when Smith asked him whether to dray the container off Terminal 25 or not, he responded merely, "You have to make up your own mind, I cannot tell you what to do."[10]

It is clear that the two employees refused to perform the disputed work as a result of their conversations with ILWU business agent Frye.[11] The question is whether ILWU induced or encouraged these refusals to perform the disputed work within the meaning of Section 8(b)(4)(i) of the Act. The Supreme Court has held that "[t]he words 'induce or encourage' are broad enough to include in them every form of influence and persuasion."[12] In this case, Frye's statement to Frisvold about "scabbing on longshore work" clearly indicated that Frye did not want Frisvold to perform the work but rather thought the longshoremen should do it. While Frye did not repeat this statement in his conversation with Smith, Smith had already learned of Frye's statement from Frisvold. Moreover, when Smith specifically asked Frye if it was all right to haul

[10] While it is well established that "in 10(k) proceedings it is unnecessary to rule on the credibility of the testimony at issue in order to proceed to a determination of the dispute," *Essex County Building and Construction Trades Council, and its Constituent Members, et al. (Index Construction Corporation)*, 243 NLRB 249, 251 (1979), we find here reasonable cause to believe the Act was violated even when relying on Frye's own testimony.

[11] We note that Frisvold specifically testified he refused to haul any more containers from Terminal 25 because he did not want to be called a "scab."

[12] *International Brotherhood of Electrical Workers, Local 501 [Samuel Langer]* v. *N.L.R.B.*, 341 U.S. 664, 701-702 (1951).

the container away, Frye gave him an equivocal answer. This answer surely led Smith to believe Frye did not want him to do so, since otherwise Frye would have simply said to go ahead. The logical and foreseeable consequence of Frye's statements was that the employees would refuse to do the work, as they did in fact do. Thus, by making these statements, Frye was in effect encouraging and inducing the employees to refuse to perform the work.

It is also clear that an object of Frye's conduct was to force or require the assignment of the disputed work to employees represented by ILWU rather than to employees represented by the Machinists. We are unpersuaded by ILWU's assertion that it had no dispute with the Employer over the assignment of any work, but rather its dispute was solely with NOL and Seacon. Inasmuch as ILWU was claiming for its members the very work which the Employer had already assigned to employees represented by the Machinists and as ILWU induced and encouraged those employees of the Employer to refuse to perform the work it was claiming, it seems self-evident that ILWU had a dispute over the Employer's assignment of the work in question to employees other than longshoremen. Likewise, we are unconvinced by ILWU's contention that in claiming this work it was motivated solely by a valid work preservation objective. Although longshoremen had in fact performed the work in dispute at Terminal 25 before Seacon and the Employer moved their operations to Terminal 25, this work assignment was made by a different employer under a different mode of operations. There is no evidence that the Employer played any role in this loss of employment by ILWU members; rather, it merely continued to follow its own past practice with respect to work assignments after it moved its repair facility to Terminal 25. Thus, this is not a case where an employer has reallocated work among its employees or supplanted one group of employees with another.[13]

Accordingly, we find that reasonable cause exists to believe that Section 8(b)(4)(D) of the Act has been violated.

As to the second factor, the parties stipulated, and we find, that no agreed-upon method exists for the voluntary adjustment of the dispute to which the Employer is bound. Accordingly, we find the dispute is properly before the Board for determination under Section 10(k) of the Act.

[13] See *International Longshore Workers Union, Local No. 62-B (Alaska Timber Corporation)*, 261 NLRB 1076, fn. 5 (1982).

E. *Merits of the Dispute*

Section 10(k) of the Act requires the Board to make an affirmative award of disputed work after giving due consideration to various factors.[14] The Board has held that its determination in a jurisdictional dispute is an act of judgment based on commonsense and experience reached by balancing those factors involved in a particular case.[15]

1. Board certifications

ILWU contends that this factor favors an award of the disputed work to employees it represents, relying on *Shipowners' Association of the Pacific Coast, et al.*, 7 NLRB 1002 (1938). In that case, International Longshoremen's and Warehousemen's Union was certified to represent a multiemployer unit of all employees engaged in "longshore work in the Pacific Coast ports of the United States" for the employer-members of associations which were the predecessors of PMA. More recently, in a Section 10(k) proceeding involving, *inter alia*, the movement of cargo containers, the Board observed that this certification was "vague and not controlling with respect to the work in dispute here, in part since it long predated development of the specific procedures in question. . . ."[16] The Board nonetheless found that this certification favored an award of the work in dispute to the International Longshoremen's and Warehousemen's Union "at least to the extent it defines longshoremen as those who 'handle said waterborne cargo,' and the business of the employers as 'the transportation or handling of waterborne cargo.'" It is clear, however, that the Board regarded the prior certification as a factor of relatively minor significance in that case and relied much more heavily on other factors. We find that, although this certification favors an award of the disputed work to employees represented by ILWU, it is a factor entitled to relatively little weight.[17]

2. Collective-bargaining agreements

The Employer and the Machinists are parties to a contract covering all of the Employer's employees, including those engaged in repairing and

[14] *N.L.R.B.* v. *Radio & Television Broadcast Engineers Union, Local 1212, International Brotherhood of Electrical Workers, AFL-CIO* [*Columbia Broadcasting System*], 364 U.S. 573 (1961).

[15] *International Association of Machinists, Lodge No. 1743, AFL-CIO (J. A. Jones Construction Company)*, 135 NLRB 1402 (1962).

[16] *Brotherhood of Teamsters & Auto Truck Drivers Local No. 85, International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America (Pacific Maritime Association)*, 208 NLRB 1011, 1014 (1974).

[17] See *General Truck Drivers, Chauffeurs & Helpers Union, Local No. 692, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (Sea-Land Service, Inc. (Pacific Division))*, 258 NLRB 412 (1981).

moving containers. This contract guarantees regular employees 40 hours' work or pay per week and prohibits the Employer from hiring persons outside the provisions of the agreement to perform work which is, has been, or could be performed by employees covered by the contract.

ILWU and PMA are parties to a contract which states that it covers the movement of containers incidental to their maintenance and repair between a container yard and a maintenance and repair facility on the same dock. The evidence is clear, however, that the Employer is not a member of PMA or otherwise bound by this agreement. As noted above in footnote 4, we have affirmed the Hearing Officer's refusal to permit ILWU to introduce an arbitration award under this contract, assigning the movement of "good order" container chassis to ILWU employees, because neither the Employer nor the Machinists was a party to that proceeding or to the contract and because the award does not deal with the specific work disputed in this case.

We find that the collective-bargaining agreement between the Machinists and the Employer supports an award of the work to employees represented by the Machinists.

3. Agreements between the Unions

ILWU relies heavily on a written 1977 agreement between the Machinists and ILWU covering the movement of container chassis on Pier 25. This agreement provided, *inter alia*, that longshoremen shall deliver "bad order" chassis from the marine yard to an agreed-upon designated area next to the repair yard and that machinists shall move the "bad order" chassis from the designated area into and out of the repair shop. The evidence shows that this was the practice at Terminal 25 during the period when American President Lines (APL) was the terminal manager, from at least 1977 until about 1981, when Seacon switched terminals with APL. While APL was terminal manager at Terminal 25, APL operated both the main container yard, where it employed ILWU-represented longshoremen, and the repair facility, where it employed employees represented by the Machinists. However, after Seacon became terminal manager at Terminal 25, it operated only the main container yard, and the Employer operated the repair facility. Although the Employer's repair facility occupies the same location at Terminal 25 as APL's repair facility did, the record reveals that there is no longer an agreed-upon designated area immediately adjacent to the Employer's repair facility where the longshoremen deliver containers ready for repairs. Furthermore, the evidence establishes that, since this change in operations, ILWU and the Machinists have not arrived at any new agreement concerning the division of work at Terminal 25.

ILWU also relies upon a 1977 agreement between the Machinists and ILWU covering the movement of damaged containers on Pier 46. This agreement provided that longshoremen would move the damaged containers from the main container yard to an agreed-upon designated area in Rows J and K and that mechanics would move the damaged containers from the designated area into and out of the repair shop. The evidence indicates that this practice was followed at Pier 46 during the period when the Employer had its repair facility there and Seacon was the terminal manager, from about 1973 to 1981; however, it is undisputed that neither the Employer nor Seacon has any facilities at Pier 46 at the present time, and there is no evidence that this agreement is still in effect as to their current operations at Terminal 25.

Therefore, we find that this factor favors neither group of employees.

4. Employer assignment and preference

The Employer has assigned the work in dispute to its employees who are represented by the Machinists, and the record indicates that the Employer maintains a preference for this assignment. We find that this factor supports an award of the work to employees represented by the Machinists.

5. Employer and industry practice

The Employer's general manager, John Personius, testified without contradiction that the Employer has always assigned the work of transporting damaged containers from other terminals to its repair facility to its employees represented by the Machinists. The record establishes, however, that at its previous location on Pier 46, where the repair facility was on the same dock as a container yard, the longshoremen transported the damaged containers originating at Pier 46 to a designated area near the Employer's facility, and the Employer only assigned its employees represented by the Machinists to move the damaged containers from that designated area into and out of its repair facility. Thus, at Pier 46, the Employer's machinists were assigned to pick up any damaged containers from the main container yards located at terminals other than Pier 46, but the Employer's machinists did not go to the main container yard at Pier 46 to pick up damaged containers. During 1981, the Employer's repair facility was temporarily located at Pier 28, where there was no container yard. At that facility the Employer's machinists were assigned to pick up all of the damaged containers on which it performed repairs, since none of the damaged contain-

ers originated from a container yard on the same dock as its repair facility at Terminal 28. After the Employer moved to Terminal 25, it had assigned its machinists to pick up only three containers from the main container yard at Terminal 25 before the incidents leading to this proceeding occurred; however, the evidence is clear that, since the Employer and Seacon moved to Terminal 25 and changed the operations there, the Machinists and ILWU have not agreed upon a new designated area at Terminal 25. Although the Employer contends that its repair facility at Terminal 25 should be treated as a separate location from the rest of Terminal 25 because it has access to the main container yard only via a public road, it is undisputed that the Employer's repair facility is located on property which is part of Terminal 25. In view of the above, we find that, where the Employer's repair facility is located on the same dock as a container yard and there is an agreed-upon designated area next to its repair facility at that location, the Employer has an established practice of assigning to its employees represented by the Machinists the work of transporting damaged containers originating on that dock only from the designated area into and out of its repair facility; otherwise, the Employer has a practice of assigning to its machinists the work of transporting damaged containers from any container yard to its repair facility and back. While the Employer's facility at Terminal 25 is located on the same dock as a container yard, there is no designated area at Terminal 25. Accordingly, we find that the factor of employer practice supports an award of the disputed work to employees represented by the Machinists.

In addition, we find that there is insufficient evidence to establish an area or industry practice with respect to the transportation of damaged containers from a container yard to a repair facility on the same dock, where there is no agreed-upon designated area on that dock. Thus, the Employer presented testimony indicating that employees represented by the Machinists have been assigned by other employers in the area to transport damaged containers from various terminals to these companies' repair facilities located away from the terminals; however, that is not the work in dispute in this case. ILWU presented testimony indicating that employees represented by it have been assigned by other employers in the area to transport damaged containers from a container yard to a designated area next to a repair facility on the same dock, which was the practice at Terminal 25 when APL was the terminal manager; however, there is no designated area at Terminal 25 under its current management, so this evidence is entitled to little weight. Therefore, we find that the factor of area and industry practice favors neither group of employees.

6. Relative skills of the employees

The record establishes that both groups of employees can perform the disputed work. While the Employer notes that only about 7 percent of ILWU members possess the Washington State combination license necessary to drive a tractor-trailer on public highways as they would be required to do at Terminal 25 in performing the disputed work, the record is clear that about 50 ILWU members possess such combination licenses. In light of the fact that the Employer only assigns two of its employees to spend about half of their time performing the disputed work, a pool of 50 employees would certainly be sufficient to provide an adequate source of drivers with the requisite skills. Inasmuch as there is no evidence that either group of employees possesses significantly superior skills related to the performance of the disputed work, we find that this factor does not favor either group of employees.

7. Economy and efficiency of operation

The record discloses that employees represented by the Machinists presently perform the disputed work in a competent manner to the satisfaction of the Employer. There is no contention by ILWU that employment of longshoremen to do the disputed work would result in greater efficiency or in an economic benefit for the Employer. To the contrary, the record reveals that if the Employer used longshoremen to do the disputed work the result would be a more inefficient and uneconomical operation because it would have to hire at least one additional employee to perform the driving at Terminal 25 while continuing to employ the two mechanics who presently spend part of their time moving containers at Terminal 25. It is undisputed that any longshoreman hired to transport containers to the Employer's repair facility at Terminal 25 would not be qualified to perform the container repair work presently performed by the two mechanics who also transport containers part of the time, and ILWU has not claimed this work. Furthermore, since the Employer's contract with the Machinists guarantees 40 hours' work or pay for its regular employees, it would still have to employ both of the mechanics who presently spend part of their time transporting containers at Terminal 25, even though their workload was reduced. Inasmuch as the evidence indicates that it would be more efficient and economical to assign the disputed work to employees represented by the Machin-

ists, we find that this factor supports such an assignment.

Conclusion

Upon the record as a whole, and after consideration of all relevant factors involved, we conclude that the Employer's employees who are represented by the Machinists are entitled to perform the work in dispute. We reach this conclusion relying on the collective-bargaining agreement, the Employer's assignment and preference, the employer practice, and the economy and efficiency of operation, all of which favor an award of the work in dispute to employees represented by the Machinists. In making this determination, we are assigning the work to employees represented by the Machinists, but not to that Union or its members. The present determination is limited to the particular controversy which gave rise to this proceeding.

DETERMINATION OF DISPUTE

Pursuant to Section 10(k) of the National Labor Relations Act, as amended, and upon the basis of the foregoing findings and the entire record in this proceeding, the National Labor Relations Board hereby makes the following Determination of Dispute:

1. Employees of West Coast Container Service, Inc., who are represented by Automotive Machinists, Lodge 289, International Association of Machinists and Aerospace Workers, AFL–CIO, are entitled to perform the work of draying and transporting cargo containers to be repaired by West Coast Container Service, Inc., from the Seacon facility at Terminal 25, Port of Seattle, to the West Coast Container Service, Inc., repair facility at Terminal 25, Port of Seattle.

2. International Longshoremen's and Warehousemen's Union Local 19 is not entitled, by means proscribed by Section 8(b)(4)(D) of the Act, to force or require West Coast Container Service, Inc., to assign the disputed work to employees represented by that labor organization.

3. Within 10 days from the date of this Decision and Determination of Dispute, International Longshoremen's and Warehousemen's Union Local 19 shall notify the Regional Director for Region 19, in writing, whether or not it will refrain from forcing or requiring West Coast Container Service, Inc., by means proscribed by Section 8(b)(4)(D) of the Act, to assign the disputed work in a manner inconsistent with the above determination.